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Supreme Court of the United States

OCTOBER TERM—1930

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER,

Plaintiffs in Error,

vs.

SOUTH CAROLINA TAX COMMISSION,

Defendant in Error.

REARGUMENT FOR DEFENDANT IN ERROR

JOHN M. DANIEL, Attorney General,
J. FRASER LYON,

Counsel for Defendant in Error.

THE STATE CO., COLUMBIA, S. C.

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The defendant in error resubmits for the consideration of the Court the brief first filed in this case and asks the Court to reaffirm the rule laid down in the case of *Blackstone vs. Miller,* 188 U. S., 89.

We are unable to offer any more forceful reasons for the Court reaffirming the principles laid down in the above cited case than those found in the dissenting opinions of the Justices of this Court in the case of *Baldwin vs. Missouri,* decided May 26, 1930.

It is very serious to the State to have its power to tax diminished, especially when new and greater demands are being made by the public upon its treasury. The best minds are exercised to find sources from which revenues may be raised for schools, good roads, for the care of the insane, the sick, and the innumerable other matters and things demanded of a civilized state. Standing alone, such considerations should, perhaps, have no weight in interpreting the Constitution. But when such matters are very seriously pressing and there is a substantial doubt as to the State not having power in this respect, the doubt should be resolved in favor of the State to tax, Unless there is a clear and positive inhibition to exact this tax, it is urged that such a necessary and fundamental need of the State should not be denied.

It is said in *Baldwin vs. Missouri* that the succession takes place in the state of domicile. We suggest that no succession takes place until the property is reduced to possession in the state where located, in the state the laws of which give vitality to the contract and will compel payment of the debt—the domicile of the debtor.

> "The general rule of law is well settled that for the purpose of founding administration, all simple contract debts, are assets at the domicile of the debtor; and that the locality of such a debt for this purpose is not affected by a bill of exchange or promissory note having been given for it, because the bill or note does not alter the nature of the debt, but is merely evidence of it, and therefore the debt is assets where the debtor lives, without regard to the place where the instrument is found or payable. *Yeomans v. Bradshaw,* Carth 373; S. C. Comb. 392; Holt, 42; 3 Salk. 70, 164; Abinger, C. B., in *Atty. Gen. v. Bouwens,* 4 M. & W. 171, 191; S. C. 1 Horn & Hurl 319, 324, Parke, B. in *Mondel v. Steele,* 1 Dowl. (N. S.) 155, 157; *Slocum v. Sanford,* 2 Conn. 533; *Chapman v. Fish,* 6 Hill, 554; *Owen v. Miller* 10 Ohio St. 136; *Pinney v. McGregory,* 102 Mass. 186."
>
> *Wyman v. U. S.* 3 Sup. Ct. Rep. 418; 109 U. S., 654.

In *Frick vs. Penn.* 268 U. S., 473; 45 Sup. Ct. Rep., 603, it is said that the state of domicile of deceased may not by way of succession tax art collections and other tangible personalty located in another state. The Court, referring to both property and succession taxes, said:

> "But to impose either tax, the state must both property and succession taxes), the state must have jurisdiction over the thing that is taxed and to impose either without such jurisdiction, is mere extortion and in contravention of due process of law. Here the tax was imposed on the transfer of tangible personalty having an actual situs in other states—New York and Massachusetts. This property, by reason of its character and situs, was wholly under the jurisdiction of those States and in no way under the jurisdiction of Pennsylvania. True, its owner was domiciled in Pennsylvania, but this neither brought it under the jurisdiction of that State, nor subtracted anything from the jurisdiction of New York and Massachusetts."

The business situs of the debt and dividends in this case is in South Carolina and under its jurisdiction. The tax may be enforced in this State, the debtor may be compelled to pay within this State and the proceeds of the debt may not be distributed until creditors are satisfied in this State in preference to others; the Statute creates a lien upon this property to secure the payment of the tax. Illinois, decedent's domicile, has no jurisdiction of the thing, the debt and the dividend, until the laws of South Carolina are satisfied and the debt and dividend delivered to the executors for distribution under the will, which is given force and effect in South Carolina in accordance with the law of the State.

> "The decedent owned many stocks in corporations of states, other than Pennsylvania, which subjected their transfer on death to a tax and prescribed means of enforcement which practically gave those states the status of lienors in possession. As those states had created the corporations issuing the stocks, they had power to impose the tax and to enforce it by such means, irrespective of the decedent's domicile,

and the actual situs of the stock certificates. Pennsylvania's jurisdiction over the stocks necessarily was subordinate to that power. Therefore to bring them into the administration in that state it was essential that the tax be paid. The executors paid it out of moneys forming part of the estate in Pennsylvania and the stocks were thereby brought into the administration there. We think it plain that such value as the stocks had in excess of the tax is all that could be regarded as within the range of Pennsylvania's taxing power. Estate of Henry Miller, 184 Cal. 674, 683. 195 P. 413, 16 A. L. R. 694. So much of the value as was required to release the superior claim of the other states was quite beyond Pennsylvania's control. Thus the inclusion of the full value in the computation on which that state based its tax, without any deduction for the tax paid to the other states, was nothing short of applying that state's taxing power to what was not within its range."

Frick vs. Pa., 45 Sup. Ct. Rep. pg. 607; 268 U. S., 473.

It is noted that the ruling opinion in *Baldwin vs. Missouri* contains the following language: "The records disclose nothing tending to show that the personal property had been given a business situs in that state." It is assumed that if a business situs had been shown in the State of Missouri, the decision in that case would have been in favor of the state. Assuming this to be the law, the Court is requested to scrutinize the statement of the account appearing on pages 139 to 150 of the transcript of record.

From this account it appears that the deceased, in conjunction with his corporation in South Carolina, was carrying on his personal business, which in business effect was not separate from the business of the corporation. Deceased owned and controlled the corporation, loaned it money, paid its debts, it paid his debts, he apparently distributed gratuities from the corporation's assets, charged personal expenses and paid incidental matters from the corporate funds which would seem to have no relation to the business of the corporation. In other words,

this account shows that the deceased drew no distinction between the affairs of the corporation and his own individual private business. The apparent gifts to the University of Chicago, page 143, is a striking example of this. Nearly one-half million dollars were turned over by the corporation to that University and the amount was debited on the account of Mr. Beidler.

It is apparent that when the corporation was in need of money, the deceased furnished it; when the deceased was in need of money, the corporation furnished it; that he charged various traveling, incidental expenses, interest, etc., to the corporation and when he desired to show a philanthropic spirit, it was done by using corporate funds. It is not intended to suggest any moral wrong when attention is called to the nature of the financial transactions of the deceased with the corporations, but simply to show that he regarded the corporation as belonging to him, and that the various amounts of money decedent loaned it and charged against it was nothing more that his personal private affairs necessary to the conduct of his business within the State of South Carolina. The deceased invested his money in his own business in South Carolina; he disbursed it, save the balance due from the South Carolina corporation, by paying debts of his corporation, charging various and sundry accounts against it and making large gratuities. Under the laws of South Carolina he was enabled to do this, certainly not under the laws of Illinois; so far as these transactions are concerned, he has enjoyed the immunities and privileges given him by the laws of South Carolina; having chosen this State as his place for conducting such business, both corporate and personal.

If either South Carolina or Illinois should be denied the right to tax in this case, we urge that it is but fair and, as it occurs to us, in accordance with natural justice that this debt and dividend held, managed and controlled, and in part earned in South Carolina, and given vitality and the power to enforce payment by the laws of South

Carolina, should be required to contribute to the support of the government of this state, regardless of the domicile of the owner.

> "Ordinarily this Court recognizes that the fiction of *mobilia sequuntur personam* may be applied in order to determine the situs of intangible personal property for taxation. *Blodgett v. Silberman,* 277 U. S. 1, 48 S. Ct. 410, 72 L. Ed. 749. But the general rule must yield to established fact of legal ownership, actual presence and control elsewhere, and ought not to be applied if so to do would result in inescapable and patent injustice whether through double taxation, or otherwise."

Safe Deposit & Trust Co. v. Commonwealth of Va; 280 U. S. 83; 50 Sup. Ct. Rep., 60.

> "In assailing the constitutionality of a state statute, the burden rests upon appellant to establish that it infringes the constitutional guarantee which he invokes. If the State Court has not otherwise construed it, and it is susceptible of an interpretation which conforms to constitutional requirements, doubts must be resolved in favor of, and not against, the state."

Toombs v. Citizens Bank of Waynesboro, 281 U. S. 643; 50 Sup. Ct. Rep., 434.

> "It was incumbent upon the appellee in invoking the protection of the Fourteenth Amendment to show with convincing clarity that the law of the state created against him the discrimination of which he complained. An infraction of the constitutional provision is not to be assumed. On the contrary, it is to be presumed that the state in enforcing its local policies will conform its requirements to the Federal guaranties. Doubts on this point are to be resolved in favor of, and not against, the state."

Corporation Com. of Okla., et al. vs. Lowe, 281 U. S., 431; 50 Sup. Ct. Rep., 399.

The South Carolina Supreme Court in its opinion in this case held:

> "The claims in question, the debts due by the Santee Company to Beidler's estate, are not bonds or other securities having possibly a local situs at the domicile of the creditor, but are assets of the decedent's estate, with an established local situs at the domicile of the debtor, subject to ancillary administration there * * * * *."

Transcript of Record, Pg. 109.

Respectfully submitted:

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